SUPREME COURT, U. S.

FILED

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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 967

GLENN J. SHARPE,
Petitioner,

VERSUS

STATE OF OKLAHOMA, EX REL. OKLAHOMA BAR ASSOCIATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT ON THE JUDICIARY OF THE STATE OF OKLAHOMA

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January, 1969

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. CE 5-0030

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In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. ----------

GLENN J. SHARPE,
Petitioner,

VERSUS

STATE OF OKLAHOMA, EX REL. OKLAHOMA BAR ASSOCIATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT ON THE JUDICIARY OF THE STATE OF OKLAHOMA

Petitioner prays that a writ of certiorari issue to the Court on the Judiciary of the State of Oklahoma to review the conviction, judgment and sentence of the Court on the Judiciary of the State of Oklahoma inflicted upon Petitioner and rendered October 4, 1968, and the order and judgment denying petition for rehearing on November 1, 1968.

OPINION BELOW

The conviction, judgment and sentence of the Trial D. ision and the Appellate Division of the Court on the Judiciary are printed as an appendix hereto, as the same are not officially reported.

JURISDICTION

The conviction, judgment and sentence of the Court on the Judiciary, Appellate Division, was entered October 4, 1968 (appendix hereto). A petition for rehearing was timely filed on October 11, 1968, and denied November 1, 1968. The Appellate Division of the Court on the Judiciary is the Court of Last Resort herein in the State of Oklahoma, Oklahoma Constitution, Article VII-A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (2), (3), and Rules 10, 11, 19, 22 and 23 of the Supreme Court of the United States.

QUESTIONS PRESENTED

1. Whether the trial of Respondent, Petitioner herein, Glenn J. Sharpe, was a trial for the alleged commission of crimes, and a trial in a criminal case, and whether said Glenn J. Sharpe was denied a trial by jury in violation of his rights under the Constitution of the United States as provided in Article 3, Section 2, and the Sixth (6th) and Fourteenth (14th) Amendments.

2. Whether the conviction, judgment and sentence herein shows that Respondent, Petitioner herein, has been found guilty of infamous crimes and the conviction, judgment and sentence herein inflicts an infamous punishment on the said Petitioner, Glenn J. Sharpe, for the adjudicated commission of infamous crimes, and whether the denial of timely demand for trial by jury herein is in conflict with decisions of the Supreme Court of the United States, and whether the opinion, judgment and sentence herein violates and offends against Petitioner's rights under Article 3, Section 2, and the Sixth (6th) and Fourteenth (14th) Amendments, United States Constitution.

CONSTITUTION INVOLVED

The Constitution of the State of Oklahoma, Article 1, Section 1:

> "The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land."

Section 2, Article III, Constitution of the United States provides:

> "The Trial of all Crimes, except in Cases of Impeachment, *shall be by Jury;* and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed." (Emphasis ours.)

The Sixth Amendment to the Constitution of the United States provides:

> *"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,* which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." (Emphasis ours.)

The Fourteenth Amendment to the Constitution of the United States provides:

> "* * * nor shall any state deprive any person of life, liberty, or property, without due process of law; * * *."

STATEMENT OF THE CASE

Glenn J. Sharpe, a three-quarter blood Seminole Indian, citizen of Oklahoma, Petitioner herein, was elected County Judge of Bryan County, Oklahoma, and assumed that office in January, 1965. He was elected to a second term as County Judge beginning January, 1967. On May 17, 1968, a petition was filed by the State of Oklahoma, ex rel. Oklahoma Bar Association, alleging, *inter alia*, that during the period from January 11, 1965 to July 26, 1967, Sharpe unlawfully received fees for the issuance of waiver orders which authorized the issuance of marriage licenses.

Article VII-A of the Constitution of the State of Oklahoma, was adopted May 3, 1966, which established the Court on the Judiciary (Oklahoma Constitution, Article VII-A). The case at bar was the first case filed in the Court on the Judiciary and the judgment, conviction and sentence herein was the first in the State of Oklahoma. Article VII-A, Oklahoma Constitution, provides, in part, as follows:

> "§ 1. Removal of judges from office—Compulsory retirement—Causes
>
> "(a) In addition to other methods and causes prescribed by the Constitution and laws, the judges of any court, exercising judicial power under the provisions of Article VII, or under any other provision, of the Constitution of Oklahoma, shall be subject to removal from office, or to compulsory retirement from office, for causes herein specified, by proceedings in the Court on the Judiciary.
>
> "(b) Cause for removal from office shall be: Gross neglect of duty; corruption in office; habitual drunkenness; commission while in office of any offense in-

volving moral turpitude; gross partiality in office; oppression in office, or other grounds as may be specified hereafter by the legislature.

"(c) Cause for compulsory retirement from office, with or without compensation, shall be mental or physical disability preventing the proper performance of official duty, or incompetence to perform the duties of the office. Added State Question No. 431, Referendum Petition No. 152, adopted election May 3, 1966."

Section 4, in part:

"(d) Pending the determination of the proceedings, the Trial Division in its discretion may suspend the respondent from the exercise of his office. After full hearing, the Trial Division shall render such judgment as the facts may justify. No judgment shall extend further than: (1) to removal of the respondent from office, *with or without disqualification to hold any public office of honor, trust, or profit under this State*, or (2) to compulsory retirement from office; * * *."

Petitioner entered his answer and plea of not guilty on June 6, 1968 (R. p. 26)[1]

The record herein reflects Petitioner interposed on July 29, 1968 a timely demand for jury trial and motion to dismiss accompanied by formal briefs (R. p. 76). Said demand for jury trial and motion to dismiss were predicated upon Petitioner's rights under Article 2, Sections 6, 19 and 20 of the Constitution of Oklahoma and by Article 3, Section 2, and the Sixth (6th) and Fourteenth (14th) Amendments to the Constitution of the United States.

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[1] Legend: R.p. is reference to pages in the Record of Pleadings.

Said demand for jury trial and motion to dismiss were denied on August 1, 1968.

Sharpe was tried before the Trial Division of the Court on the Judiciary beginning August 1, 1968, and said Trial Division on August 6, 1968, convicted and sentenced Respondent, and by its judgment and sentence, removed him from the office of County Judge of Bryan County, Oklahoma, and further disqualified Petitioner from holding any public office of honor, trust or profit in the State of Oklahoma for a period of three years (R. p. 102).

Petitioner appealed to the Appellate Division of the Court on the Judiciary (R. p. 104).

On October 4, 1968, the Appellate Division affirmed the Trial Division's judgment and conviction and sentence, modifying the sentence by limiting disqualification to judicial office only (R. p. 198).

Timely petition for rehearing was filed and denied on November 1, 1968 (R. p. 216).

Notice of petition for certiorari and appeal to Supreme Court of the United States was filed and served upon Respondent, State of Oklahoma, *ex rel.* Oklahoma Bar Association on November 6, 1968 (R. p. 220).

REASONS FOR GRANTING THE WRIT

The questions presented herein involve fundamental rights of citizens of the United States who are elected to the judiciary and are not only important and vital to the rights of Petitioner, Glenn J. Sharpe, but are likewise important and vital to all that class of citizens of the United States who are elected judicial officers.

Petitioner was convicted under the criminal charge herein and the judgment and sentence inflicted upon Petitioner was an infamous punishment for the commission of an infamous crime, *i.e.*, removal from office, and disqualification from holding any public office of honor, trust or profit in the State of Oklahoma for a period of three years. The Appellate Division affirmed such conviction, judgment and sentence merely modified same by limiting the disqualification to judicial office only.

Title 21, C.S.A., Sections 1-11 inclusive, was originally Chapter 23 Revised Laws Oklahoma 1910. Said Sections 1-11 inclusive, constitute the Penal Code of the State of Oklahoma. Section 1, *supra*, is as follows:

"§ 1. Title of code

"This Chapter[1] shall be known as the penal code of the State of Oklahoma. R.L.1910, § 2082.

---

[1] R.L.1910, ch. 23, now incorporated in this title."

Section 2, *supra*, is as follows:

"§ 2. Criminal acts are only those prescribed—'This code' defined

"No act or omission shall be deemed criminal or punishable except as prescribed or authorized by this code. The words 'this code' as used in the 'penal code' shall be construed to mean 'Statutes of this State.' R.L. 1910, § 2083."

Section 3, *supra*, is as follows:

"§ 3. Crime and public offense defined

"A *crime or public offense* is an act or omission forbidden by law, and to which is annexed, *upon conviction*, either of the following punishments:

1. Death;

2. Imprisonment;

3. Fine;

4. *Removal from office;* or,

5. *Disqualification to hold and enjoy any office of honor, trust, or profit, under this State.* R.L.1910, § 2084." (Emphasis ours.)

Section 4 classifies crimes as (1) Felonies, and (2) Misdemeanors.

Section 5 defines a felony as a crime which may be punishable by death or imprisonment in the state prison.

Section 6 provides, "Every other crime is a misdemeanor."

Section 7, provides as follows:

"§ 7. Objects of penal code

"This chapter[1] specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; and defines the nature of the various crimes; and prescribed the kind and measure of punishment to be inflicted for each. The manner of prosecuting and convicting criminals is regulated by the code of criminal procedure.[2] R.L.1910, § 2088.

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[1] R.L.1910, ch. 23, now incorporated in this title.

[2] R.L.1910, ch. 62, now incorporated in Title 22."

Section 8 provides as follows:

"§ 8. Conviction must precede punishment

"The punishments prescribed by this chapter[1] can be inflicted only upon a legal conviction in a court having jurisdiction. R.L.1910, § 2089.

---

[1] R.L.1910, ch. 23, now incorporated in this title."

Section 9 provides as follows:

"§ 9. Punishment of felonies

"Except in cases where a different punishment is prescribed by this chapter,[1] or by some existing provision of law, every offense declared to be felony is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the State penitentiary not exceeding two years or by both such fine and imprisonment. R.L.1910, § 2090.

---

[1] R.L.1910, ch. 23, now incorporated in this title."

Section 10 provides as follows:

"§ 10. Punishment of misdemeanor

"Except in cases where a different punishment is prescribed by this chapter[1] or by some existing provisions of law, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding five hundred dollars, or both such fine and imprisonment. R.L.1910, § 2091.

---

[1] R.L.1910, ch. 23, now incorporated in this title."

Section 11 provides as follows:

"§ 11. Specific statutes in other chapters as governing

"If there be in any other chapter of the laws of this State a provision making any specific act criminal and providing the punishment therefor, and there be in this penal code any provisions or section making the same act a criminal offense or prescribing the punishment therefor, that offense and the punishment thereof, shall be governed by the special provisions made in relation thereto, and not by the provisions of this penal code. R.L.1910, § 2092."

The above eleven (11) Oklahoma Statutes constitute the penal code of Oklahoma.

We submit that under the Oklahoma penal code, particularly Section 3, *supra, any act* or *omission* forbidden by law to which is annexed, upon conviction, either the punishment of *removal from office* or *disqualification to hold* and enjoy any office of honor, trust or profit under the State of Oklahoma, *is a CRIME.*

In *Stewart* v. *State,* 4 Okla. Cr. 564, 109 Pac. 243, it was held:

> "It is the exclusive province of the legislature to declare what shall constitute a crime, * * *"

The Supreme Court of Oklahoma follows the general rule, and has held, the question of whether the alleged offense constitutes a crime does not turn upon the punishment actually inflicted by the court, but upon the extent authorized by the statute. *Re Dunham's Estate* (Okla.), 74 P.2d 117.

The judgment and sentence of the Trial Division is as follows (R. p. 103):

> "After hearing, consideration of the evidence, and argument of counsel, the Court on the Judiciary finds from the evidence, beyond a reasonable doubt, that Respondent, during 1965-1966, and the first half of 1967, did collect and receive monies from applicants for waiver orders, which was not authorized by law and was retained for his own use and that such constitutes corruption in office and Respondent should be removed from office instanter.
>
> "It is therefore ordered, adjudged and decreed, that Respondent, Glenn J. Sharpe, County Judge of Bryan

> County, Oklahoma, *be and is hereby removed from office instanter, and shall further be disqualified to hold any public office of honor, trust, or profit, in the State of Oklahoma, for a period of 3 years.*
>
> "This Order shall be and remain in full force and effect pending appeal, if any." (Emphasis ours.)

Any offense for which, upon conviction, a punishment of disqualification to hold office may be inflicted, is an infamous crime. *Cf. Ex Parte Wilson,* 114 U.S. 417, 5 Sup.Ct. 935; *People* v. *Kipley,* 49 N.E. 229, 239, 171 Ill. 44, 41 L.R.A. 775; *Baum* v. *State* (Ind.), 61 N.E. 672, 673; *Hunter* v. *U. S.,* 272 Fed. 235, *cert. den.* 257 U.S. 633, 66 L.Ed. 407, 42 S.Ct. 47; *U. S.* v. *Butler* (1876 CCSC), 4 Hughes 512, F. Cas. No. 14701.

Petitioner herein made a timely demand for trial by jury asserting that he was entitled to such a trial by jury under Article 3, Section 2, and the Sixth (6th) and Fourteenth (14th) Amendments to the United States Constitution.

We believe, and submit, that the Bill of Rights to the United States Constitution applies to lawyers and judges the same as other classes of citizens. *Cf. Spevack* v. *Klein,* 385 U.S. 511, 17 L.Ed.2d 574, 87 S.Ct. 625; *Cohen* v. *Hurley,* 366 U.S. 117, 6 L.Ed.2d 156, 81 S.Ct. 954, dissenting opinions at 6 L.Ed.2d 166-183.

Petitioner urged in the State Court, and urges here, that under *Duncan* v. *Louisiana,* — U.S. —, 20 L.Ed.2d 491, 88 S.Ct. —, and *Bloom* v. *Illinois,* — U.S. —, 20 L.Ed.2d 522, 88 S.Ct. —, he was entitled to a trial by jury in this case.

Since statehood in Oklahoma (prior to the enactment of Article VIIA Oklahoma Constitution on May 3, 1966) actions for the removal from office of judges (except Justices of the Supreme Court) required a trial by jury. This case is Cause No. 1 in the Court on the Judiciary, and the complaint was filed on May 17, 1968. On May 20, 1968, this Court decided *Duncan* and *Bloom*. On July 29, 1968, prior to trial, Petitioner filed his demand for jury trial and motion to dismiss (R. p. 76).

There is no decision of an appellate court in Oklahoma, prior to this case, which holds that any county or district judge in Oklahoma could be removed from office in any court trial without a jury. The Oklahoma rule, prior to Article VIIA, Oklahoma Constitution, in a strict removal case was that the sole object was removal from office, *and not punishment*, and consequently was a special proceeding, to be tried as a misdemeanor as to the degree of proof required and instructions to the jury. *Maben* v. *Rosser* (Okla.), 103 Pac. 673, pp. 678-9. *Cf. State* v. *Blake* (Okla.), 280 Pac. 833; *Bd. County Comsr's* v. *Shutler* (Okla.), 281 Pac. 222.

It is clear to us, and we submit, that this complaint and this trial is one whereby the very object is *to punish Petitioner* for alleged acts done and committed by him while County Judge of Bryan County, Oklahoma. The law under which this case was prosecuted provides that upon conviction the accused judge shall be removed from office *with or without disqualification to hold any public office.* It is not the sentence inflicted, but the sentence authorized by the law, which determines whether the object of the law is to *punish* an accused. *Cf. Re Dunham's Estate, supra.*

This Court in *Duncan* and *Bloom* held that the Fourteenth (14th) Amendment guaranteed the right of a trial by jury in a state tribunals in trials of serious crimes. In *Duncan* a misdemeanor punishable by two years in prison was involved. In *Bloom* the charge was contempt of court.

We say, and submit, that Petitioner in this case has had an infamous punishment inflicted upon him, and such infamous punishment is indistinguishable from such punishment inflicted for conviction under ordinary criminal laws. *Duncan* and *Bloom* hold the right to jury trial is a fundamental matter in serious criminal cases wherein comparable infamous punishment is authorized to be inflicted, and we submit it must be extended to Petitioner in this case.

Petitioner in this case preferred, and demanded respectfully, the common sense judgment of a jury to the more tutored, and perhaps less sympathetic reaction of a panel of judges to his defense. *Cf.* Dissenting opinion, *Green* v. *United States*, 356 U.S. 193, 78 S.Ct. —, 2 L.Ed.2d 693-708. We submit under our Bill of Rights he was entitled to such a trial by jury. He has been convicted by a court of judges, sentenced, and punished, by not only removal from office, but banished from his citizenship for three years. As was pointed out clearly in the dissenting opinions in *Cohen* v. *Hurley, supra* (now the majority view of this Court since *Spevack* v. *Klein, supra*) a judgment which strips the rights and privileges of a man in his capacity as a lawyer necessarily affects his rights and privileges as a man. Such reasoning is even more apropos to a judge.

The conviction, judgment and sentence inflicted upon Petitioner in this case is far, far more serious than a conviction, judgment and sentence of almost any ordinary crime. It is a blot upon the character of Petitioner for his lifetime, and can never be erased. To a certain class of individuals disqualification to hold public office of honor would amount to only slight punishment, but not so in this case. Petitioner is a young lawyer and judge, and he must carry the mark or brand of such disenfranchisement for his entire life. A fine, or jail sentence for commission of a high misdemeanor, or even a term in prison for a felony, would not be as severe and serious punishment as the conviction and sentence of removal from office and disenfranchisement inflicted upon him by the court.

In *Bloom* this Court was confronted with the broad rule of prior cases of this Court that all criminal contempts could be constitutionally tried without a jury. On this point this Court said (— U.S. —, 20 L.Ed.2d, pp. 526-28, 88 S.Ct. —):

> "* * * The rule of our prior cases has strong, though sharply challenged, historical support; but neither this circumstance nor the consideration of necessity and efficiency normally offered in defense of the established rule, justify denying a jury trial in serious criminal cases. The Constitution guarantees the right to jury trial in state court prosecutions for contempt just as it does for other crimes."

Herein the impact of the conviction, judgment and sentence upon Petitioner is the same as if he had been convicted of an ordinary offense or crime resulting in infamous punishment. We submit that comparable impelling reasons

to those in criminal contempts exist in this case. By analogy, we submit the following language in *Bloom* is applicable here (— U.S. —, 20 L.Ed.2d, pp. 528-29, 88 S.Ct. —):

> "Criminally contemptuous conduct may violate other provisions of the criminal law; *but even when this is not the case convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same.* Indeed, the role of criminal contempt and that of many ordinary criminal laws seem identical—protection of the institutions of our government and enforcement of their mandates.
>
> "Given that criminal contempt is a crime in every fundamental respect, the question is whether it is a crime to which the jury trial provisions of the Constitution apply. We hold that it is, primarily because in terms of those considerations which make the right to jury trial fundamental in criminal cases, there is no substantial difference between serious contempts and other serious crimes. Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power. Contemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. Even when the contempt is not a direct insult to the court or the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court." (Emphasis ours.)

Petitioner interposed a plea of justification of his acts (Answer R. p. 26). He made a timely demand for a trial by jury. We believe he has a right to a trial by jury in this case the same as *Bloom* had in his contempt case. We

do not know whether a jury would accept Petitioner's defense, but we believe, and submit, he has a fundamental right to have a jury determine his fate rather than a panel of judges.

The framers of the law involved herein (Oklahoma Constitution, Article VII-A, *supra*) proceeded upon the fallacious premise that the United States Constitution did not guarantee a trial by jury in a state tribunal. *Duncan* and *Bloom* demonstrated and established that any trial in the United States, whether in federal or state courts, wherein serious punishment upon the accused was authorized to be inflicted, was such a trial which entitled the accused to a "trial by jury." Petitioner has been accused of crimes, and convicted and sentenced to infamous punishment. It is true that he is a judge, but that fact does not strip him of the basic fundamental rights he has as an American Indian citizen. *Arguendo,* to say that this trial, conviction and sentence was constitutional would be authority to say that any state could enact laws providing for the removal from office and disenfranchisement of any elected official in a trial, *before judges alone,* without a jury. What is the difference, legally, in a trial of a judge or a sheriff for malfeasance in office. We say none.

The right of every American citizen to a trial by jury has been a paramount landmark of our system of justice ever since our Bill of Rights. Petitioner believes he has a defense to the charges under which he was accused. We believe, and submit he has a right to a trial by jury. Our argument is best expressed by the succinct quotation from *Duncan* wherein it is said (— U.S. —, 20 L.Ed.2d 499-500):

"* * * Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it. Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. * * *"

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that his petition for writ of certiorari should be granted.

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TONEY M. WEBBER

January, 1969

APPENDIX

IN THE COURT ON THE JUDICIARY OF THE STATE OF OKLAHOMA

TRIAL DIVISION

FILED
Supreme Court
of Oklahoma
Aug 5 1968
ANDY PAYNE
Clerk

STATE OF OKLAHOMA, EX REL OKLAHOMA BAR ASSOCIATION,	)	
PETITIONER,	)	
VS.	)	NO. 4
GLENN J. SHARPE,	)	
RESPONDENT.	)	

TRIAL ORDERS AND JUDGMENT

Now, on this 1st day of August, 1968, pursuant to prior order, the Court convened at the time and place specified in such order, all members of the Court being present except the Honorable Boston W. Smith, xcused.

Thereupon, the following occurred:

1. The Motion of the Respondent to Dismiss, filed July 29, 1968 overruled, exception allowed.

2. Respondent's Demand for Jury Trial, filed July 29, 1968, denied, exception allowed.

3. Thereupon, the Court ordered the trial to proceed, and after hearing opening statements of the Petitioner and the Respondent, and the evidence of witnesses, by agreement

of all parties, and the Court, the trial of the case is ordered to convene from and after 1:30 P. M., this date, in the chamber of the Oklahoma State Senate as a courtroom.

4. After hearing additional testimony in the afternoon, court is recessed until 9:00 A. M., 2 August 1968, and after reconvening at said time in the Senate Chamber using the same as a courtroom, Bill Bradshaw, C. S. R., hereby is appointed additional court reporter for this case; and after hearing additional evidence and receiving additional witnesses, and the hour of 5:30 P. M. having arrived, recess is called until 10:00 A. M., 5 August 1968.

5. As directed, the Court is reconvened on said latter date in said Senate Chamber courtroom, and Real Pitts and John A. Stevens, both of Stillwater, Oklahoma, hereby are appointed bailiffs for the remainder of this case.

The hour of 5:00 P. M. having arrived, trial is recessed until August 6, 1968, 9:00 A. M.

6. As directed, the Court reconvened on said latter date in the Senate Chamber Courtroom. After receiving additional evidence, both parties having rested, and the Court having heard the closing arguments of the respective counsel, recessed for lunch.

7. After lunch, the Court retired to the conference room of the Supreme Court to consider the case, and thereafter, in the courtroom of the Supreme Court of this State, rendered the following judgment:

> After hearing, consideration of the evidence, and argument of counsel, the Court on the Judiciary finds from the evidence, beyond a reasonable doubt, that Respondent, during 1965-1966, and the first half of 1967, did collect and receive monies from applicants for waiver orders, which was not authorized by law and was retained for his own use and that such constitutes corruption in office, and Respondent should be removed from office instanter.

It is therefore ordered, adjudged and decreed, that Respondent, Glenn J. Sharpe, County Judge of Bryan County, Oklahoma, be and is hereby removed from office instanter, and shall further be disqualified to hold any public office of honor, trust, or profit, in the State of Oklahoma, for a period of 3 years.

This Order shall be and remain in full force and effect pending appeal, if any.

s/ 1. R. L. Hert
2. Lavern Fishel
3. Kenneth Hughes
4. Joe D. Shumate
5. Howard Phillips
6. C. F. Bliss, Jr.
7. John R. Richards
8. Charles M. Wilson

8. It is further ordered that the Clerk of the Supreme Court shall mail certified copies of this Order and Judgment to the Respondent, each attorney of record, the Executive Director of the Oklahoma Bar Association, the Chief Justice of the Supreme Court, the Court Clerk of Bryan County, Oklahoma, the Chairman of the Board of County Commissioners of Bryan County, Oklahoma, the County Clerk of Bryan County, Oklahoma, and the Honorable Ben T. Williams, Presiding Judge, Appellate Division, this Court.

Dated 6 August 1968.

R. L. Hert
R. L. HERT
PRESIDING JUDGE

(for Certification see back of Page)

[APPENDIX]

IN THE COURT ON THE JUDICIARY OF THE STATE OF OKLAHOMA

APPELLATE DIVISION

FILED
Supreme Court
of Oklahoma
Oct 4 1968
ANDY PAYNE
Clerk

GLENN J. SHARPE, Appellant,	)	
vs.	)	No. 1
STATE OF OKLAHOMA, EX REL OKLAHOMA BAR ASSOCIATION, Appellee.	)	

SYLLABUS

1. Provisions of the Constitution or statutes more recently adopted must prevail when in conflict with earlier provisions on the same subject matter.
2. A judicial officer is not entitled to a trial by jury in a proceeding before the Trial Division of the Court on the Judiciary.
3. A state is not required by the Sixth Amendment to U. S. Const. to grant a jury trial to a judicial officer who is sought to be excluded from present and future service on the judiciary on grounds having a rational relationship to his continuing fitness as a judge.
4. The due process clause of the Fourteenth Amendment is satisfied by the procedure provided in Art. 7-A, Okl. Const., which prescribes the manner for trial of proceedings before the Court on the Judiciary.

APPEAL FROM TRIAL DIVISION OF COURT ON THE JUDICIARY

R. L. Hert, Presiding Judge

Proceeding to remove a judge from office. Trial Division entered judgment removing judge from office with disqualification.

Judgment, as modified, affirmed.

Charles Hill Johns,
James F. Howell,
Toney M. Webber,
Midwest City, Oklahoma, For Appellant.

Howard K. Berry,
Oklahoma City, Oklahoma,
David L. Field,
Enid, Oklahoma, For Appellee.

McINERNEY, J.:

This is an appeal from the judgment of the trial division of the Court on the Judiciary rendered August 6, 1968 removing Glenn J. Sharpe from the office of County Judge of Bryan County, Oklahoma. Sharpe was further disqualified to hold any public office of honor, trust, or profit in the State of Oklahoma for a period of three years. These proceedings are being conducted pursuant to Article 7-A, Constitution of Oklahoma, adopted May 3, 1966.

Sharpe made a timely demand for jury trial which was refused. The denial of a jury trial forms the principal basis for this appeal. Two other propositions will be disposed of before reaching the principal question.

Sharpe, Glen J., Petitioner herein, was elected County Judge of Bryan County, Oklahoma and assumed that office in January, 1965. He was elected to a second term as county judge beginning January, 1967. As noted above, Article 7-A of the Constitution was adopted May 3, 1966 and formed a part of the organic law of this state prior to

Sharpe qualifying for his second term of office. On May 17, 1968, a petition was filed by the Oklahoma Bar Association alleging, inter alia, that during the period from January 11, 1965 to July 26, 1967, Sharpe improperly received fees for the issuance of waiver orders which authorized the issuance of marriage licenses. This period of time covers both his first term and a part of his second term as county judge.

The record in this case reflects that Sharpe received and retained a sum in excess of $13,000.00 for issuing waiver orders dispensing with the blood test documents required by 43 O.S. 1961 §§ 31 and 32, the three day waiting period required by 43 O.S.Supp. 1965 § 5, and the age requirements of 43 O.S.Supp. 1965 § 3. Sharpe contended that he was accepting gratuities for extra services rather than charging fees. The trial division rejected this contention and found that Sharpe collected and received monies for waiver orders not authorized by law and that this activity constituted corruption in office. The trial division then entered the order and judgment set out above.

Sharpe urges that the trial division should have dismissed the petition on timely motion prior to trial for the reason that the petition was improperly filed. This contention is based on the Executive Director of the Oklahoma Bar Association signing the petition rather than the Executive Secretary of the Oklahoma Bar Association, the title of the person designated in Section 4, of Article 7-A, Okl. Const.

After the passage of the amendment creating the Court on the Judiciary, the Supreme Court of Oklahoma adopted new rules creating and controlling the Oklahoma Bar Association. 5 O.S.Supp. 1967 Chap. 1, App. 1, Art. 1 et seq. These rules became effective September 24, 1966. The governing body of the Association, formerly the Executive Council, was designated as the Board of Governors and the Executive Secretary was designated as the Execu-

tive Director. The possibility of a change in the name or nomenclature of the governing body of the Association is recognized in the constitutional amendment by the references to "Oklahoma Bar Association, chosen by its Executive Council, *or other body exercising similar powers*" in Art. 7-A § 2 (b) and (c). The Board of Governors is the successor to the Executive Council. The Executive Director is the successor to the Executive Secretary, and exercises similar duties. The evident intent of the constitutional amendment was to permit the governing body and its executive officer to institute proceedings. A constitutional amendment should be construed in the light of its purpose and given a practical interpretation so that the plainly manifest purpose of those who adopted it may be carried out. McVickers et al. v. Zerger et al., Okl., 389 P.2d 977. The strict construction sought by Sharpe is contrary to the plainly manifest purpose of the people as expressed by their adoption of Article 7-A, Okl. Const. This proposition is without merit.

Sharpe objects to the admission into evidence of acts of malfeasance and misfeasance occurring prior to January, 1967 and during his first term of office. This objection is predicated upon his theory that this evidence would tend to prove a criminal offense rather than support a judgment removing him from office. We are unable to follow this reasoning.

Sharpe cites 22 O.S. 1961 § 1181 and cases construing § 1181 to support this contention. In 1955, the legislature enacted 22 O.S. 1961 § 1181.1 which specifically included acts committed during a previous term as grounds for removal. The assertion that § 1181.1, supra, has no bearing on the jurisdiction or scope of inquiry of this court is untenable. Acts or omissions committed during a previous or preceding term may be considered by the Court on the Judiciary. A trial conducted by the Court on the Judiciary is a special proceeding for the removal or compulsory retirement of judges. There is no reason or logic to hold the

admission of evidence more restrictive in this court than permitted by 22 O.S. 1961 § 1181.1.

We also observe that the evidence included receipt and retention of monies by Sharpe subsequent to January, 1967, the term of office held at the time of the trial. The sufficiency of the evidence is not seriously challenged. The evidence is amply sufficient to support the judgment rendered.

The principal contention of error is that Sharpe was denied a jury trial. In separate propositions, Sharpe asserts, first, that his right to a trial by jury is guaranteed by Article 2, §§ 6, 19 and 20 of the Constitution of Oklahoma and by Article 3, § 2, together with the 6th and 14th Amendments of the Constitution of the United States, and secondly, the judgment rendered is infamous punishment which can only be rendered by a jury for the conviction of an infamous crime. These propositions are so interwoven that they will be considered together.

Article 2, § 20, Okl. Const., provides, "(I)n all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed: . . ." The application of this section, and §§ 6 and 19, to the present case is to be determined by the nature of the proceedings in the trial division of the Court on the Judiciary.

An examination of Article 7-A demonstrates unequivocally that proceedings thereunder are not criminal prosecutions. The jurisdiction of the court is limited to the removal with or without disqualification or the compulsory retirement of judges. Article 7-A, §§ 1 and 4(d). The court is charged with the duty of making rules of procedure, § 3, or following the rules of civil procedure or common law, § 4(c). Jeopardy, civil or criminal, does not attach to the acts invoking the court's jurisdiction, § 4(d), as commanded by Article 2, § 21 of the Constitution relating to criminal prosecutions. The review in the appellate division

is an equity review and the judgment may be affirmed, modified, reversed or a new judgment entered, § 5(c). The court is not empowered to imprison or fine a person brought before it. Both the structure and the intent of Article 7-A, Okl. Const., compel the conclusion that the proceedings contemplated are not criminal prosecutions. Article 2, § 20, Okl. Const., applies only to criminal prosecutions.

Sharpe contends that 21 O.S. 1961 § 3 defines a crime or public offense. Disqualification to hold and enjoy any office of honor, trust, or profit under this State is one of the punishments enumerated under this section. § 3(5).

This section provides that a "crime or public offense is an act or omission forbidden by law" and then enumerates the permissible punishments. Section 3, supra, does not create an offense or describe an act which is made criminal. The legislature must define offense by particular description of act or omission constituting it. A mere delineation of permissible punishments for a crime is insufficient to create a criminal offense. 21 O.S. 1961 § 2. We have found no criminal statute imposing disqualification as a specific punishment for an act or offense in the criminal code. Sharpe cites no such statute.

Article 2, § 6, Okl. Const., provides that the courts of this State shall be open to every person to afford a speedy and certain remedy. The Court on the Judiciary is a court of this State, Article 7, § 1, Okl. Const., and no specific complaint is made of either the speed or certainty of the judgment rendered.

Article 2, § 19, Okl. Const. provides that, "(T)he right of trial by jury shall be and remain inviolate, . . ." This section applies only to those cases in which a right to trial by jury inheres in the first instance. Section 19, supra, preserves the right where it existed at common law. Vogel v. Corporation Commission, 190 Okl. 156, 121 P.2d 586. In Oklahoma there are no common-law crimes, and no act

is a crime unless made so by statute. 21 O.S. 1961 § 2; State v. Stegall, 96 Okl. Cr. 281, 253 P.2d 183; Griffin v. State, Okl., 357 P.2d 1040, 1046.

Sharpe's reliance on earlier provisions of the Oklahoma Constitution and statutes in conflict with Article 7-A must be rejected under settled state law. Article 7-A, adopted by the people in May, 1966, makes no provision for a jury trial. The intent of the new article is plain, clear and unambiguous. The evident meaning must be accepted without resort to interpretative devices to fabricate a different meaning. State ex rel. Ogden v. Hunt et al., Okl., 286 P.2d 1088; Hines v. Winters et al., Okl., 320 P.2d 1114. This is the latest expression of public policy and forms a part of the organic law of this State. Later provisions of the Constitution or statutes on the same subject matter must prevail when in conflict with earlier provisions. 75 O.S. 1961 § 22. No violation of a state constitutional right is present in the proceedings under review.

Does Article 7-A, Okl. Const., offend the rights of Sharpe under Article 3, § 2, and the Sixth, Seventh and Fourteenth Amendments of the Constitution of the United States? Since the Seventh Amendment to the U. S. Constitution never has been held to apply to the states, we need not consider the argument presented on this point. It is unsupported by any U. S. Supreme Court pronouncements.

The trial division's refusal to grant a jury trial is asserted by Sharpe as violative of his rights under the 6th Amendment to the U. S. Constitution. This claim to error is rested principally on Duncan v. State of Louisiana, — U.S. —, 20 L.ed.2d 491, 88 S.Ct. — (1968), and Bloom v. State of Illinois, — U.S. —, 20 L.ed.2d 522, 88 S.Ct. — (1968). The cited cases hold that the 6th Amendment's right to a jury trial "in serious criminal cases" is applicable to the states through the 14th Amendment; but neither Bloom nor Duncan settles "the exact location of the line between petty offenses and serious crimes."

A criminal action is defined by 12 O.S. 1961 § 7 as "one prosecuted by the State as a party, against a person charged with a public offense, for the punishment thereof." Proceedings before the Court on the Judiciary do not fall into this definition. Art. 7-A, § 4(d). Their sole object is to declare one who exercises judicial power to be unfit, on grounds quite distinct from criminal acts or omissions, to hold a judgeship. Art. 7-A, § 1(b) and (c) and 4(d), Okl. Const. A state is free to exclude from public employment those persons whose unfitness and unsuitability bears a rational relationship to the qualifications for a particular position, although the exclusion may incidentally limit the excluded person's opportunity for re-employment, so long as the adjudication of unfitness rests on constitutionally permissible standards and emerges from a proceeding which conforms to the minimum standards of due process. The interest of the state in the integrity of those in its service has been held to merit federal recognition in a multitude of cases decided in the last two decades. Garner v. Board of Public Works of Los Angeles, 341 U.S. 716, 95 L.ed 1317, 71 S.Ct. 909 (1951); Adler v. Board of Education 342 U.S. 485, 96 L.ed 517, 72 S.Ct. 380, 27 ALR.2d 472 (1952); Beilan v. Board of Education, 357 U.S. 389, 2 L.ed.2d 1414, 78 S.Ct. 1317 (1958); Keyishian v. Board of Regents of New York, 385 U.S. 589, 17 L.ed.2d 629, 87 S.Ct. 675 (1967); and Pickering v. Board of Education, — U.S. —, 20 L.ed.2d 811, 88 S.Ct. — (1968).

Sharpe was declared unfit for, and removed from, a judicial office as a result of an adversary proceeding which met all the basic requirements of federal and state due process. The trial division's judgment declaring him ineligible to hold public office is to be regarded not as punishment for past misconduct but rather as a mere legal consequence attached to the adjudged unfitness. Reduced to simplicity, the so-called disqualification is but an exclusion from state service on grounds which bear a rational relationship to Sharpe's lack of suitability for the retention of his judgeship.

The proceeding lacks the essential characteristics of a criminal prosecution to which the 6th Amendment's asserted guarantee is applicable. Even if the nature of the proceeding is to be measured by the seriousness of the sanction imposed rather than by the object of the proceeding, there is here no merit in the contention that imposition of a disqualification to hold public office affords a basis for characterizing the entire process as falling within the classification of "criminal prosecution" in the sense in which that term is used in the 6th Amendment. This is so because no sanction properly can be imposed by the Court on the Judiciary beyond that which is directly relevant to a declaration of judicial unfitness. In short, the essence of the sanction is not "punishment" but present and future exclusion from office based on grounds bearing rational relationship to the interest of the state in the fitness of its judicial personnel.

It is true that in the present cause disqualification was extended to "any public office of honor, trust, or profit" within this State. Although this sanction is expressly authorized by Article 7-A, § 4(d), Okl. Const., its generality might conceivably be subject to challenge as the deprivation of a basic civil right bordering on "serious punishment" within an expansion of present decisional law. That issue need not be reached here inasmuch as, in our opinion, the interest of the State of Oklahoma in excluding Sharpe from judicial office will be adequately and amply served by modifying the trial division's judgment so as to limit its disqualification clause to any judicial office. The judgment of the trial division is accordingly modified to provide that Sharpe shall be disqualified to hold any judicial office within this State for a period of three years.

Judgment, as modified, affirmed.

BEN T. WILLIAMS, P.J., and KIRKSEY NIX, WELDON FERRIS, BOB HOWELL, ARTHUR J. MARMADUKE, HOWARD M. McBEE, JESS I. MIRACLE and A. P. VAN METER, JJ., concur.